IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

CRL.A.No. 1145 of 2006(A)

SC.497/2005 of ADDL. DISTRICT & SESSIONS (AD HOC)
FAST TRACT COURT II, PATHANAMTHITTA
CP.11/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR

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APPELLANT/ACCUSED:

UNNIKRISHNA KURUP,
C.NO.234, CENTRAL PRISON,
TRIVANDRUM-12.

BY ADV. ADV.R.RENJITH (STATE BRIEF)

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTORSRI. C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1145 OF 2006

Dated this the 11th day of December, 2006

JUDGMENT

The appellant is the accused in Sessions Case No.497 of 2005 on the file of the Additional District and Sessions (Ad hoc) Fast Track Court II, Pathanamthitta. He faced trial for the offence punishable under Section 8(1) and (2) of the Abkari Act.

2. The prosecution case against the appellant was that on 29.7.1999 at about 7.15 A.M., while PWs.1, 2 and 3 were on patrol duty, they found the appellant in possession of 5 litres of arrack in a plastic can having a capacity of 10 litres. The appellant was arrested at the spot, the contraband article was seized and sample was taken and sent for chemical analysis. To prove the case against the appellant, the prosecution examined PWs.1 to 5 and produced Exts.P1 to P8(a) and also MO.1 plastic can. After closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. and he denied having committed any offence as alleged by the prosecution. The appellant stated that the excise officials came to his house with a can and arrested him from the house. Accepting

the prosecution evidence, the trial court found the appellant guilty under Section 8(1) and (2) of the Abkari Act, convicted him thereunder and sentenced him to undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of one year. The above conviction and sentence are challenged in this appeal.

3. The appeal is filed through the jail authorities and hence, the appellant is defended by a State Brief. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel for the appellant submits that the trial court went wrong in finding the appellant guilty of the offence alleged against him as reliance was placed on the evidence of the official witnesses alone and there was no independent evidence. Counsel further submits that though PW.4 was cited as an independent witness, he turned hostile to the prosecution. Counsel also submits that the contraband articles were not produced before the Magistrate within time and that there was delay in recording the statement of PW.3 The learned Public Prosecutor, on the other hand, submits that the judgment under appeal requires no

interference.

5. PW.1 was the Preventive Officer attached to Adoor Excise Range Office who detected the offence. He deposed before the trial court that while he and other excise officials were on patrol duty on 29.7.1999, they saw the appellant carrying a 10 litre can containing 5 litres of arrack. PW.1 stated that he seized MO.1 can containing the arrack under Ext.P2 mahazar and arrested the appellant as per Ext.P1 arrest memo. He further deposed that 180 ml. of arrack was taken as sample and sent for chemical analysis and the appellant along with the contraband article and sample were produced before the Range Officer on the same day and subsequently on the very same day, the appellant and the contraband articles were produced before the Judicial First Class Magistrate on preparing Ext.P5 property list. Ext.P6 is the chemical analysis report which showed that the sample contained 30.01% by volume of ethyl alcohol.

6. PWs.2 and 3 were the other officials who were on patrol duty on 29.7.1999 and who had accompanied PW.1 to the scene of occurrence. Their evidence support the evidence given by PW.1. PW.5, the Excise Inspector filed the final charge sheet on receiving Ext.P6 chemical analysis report.

7. The trial court considered at length the evidence adduced by the prosecution and found that the prosecution succeeded in proving the case against the appellant. With regard to the contention of the learned counsel appearing for the appellant that the sample and residue were not produced before the court below within time and thereby the excise officials violated the mandatory provisions of the Abkari Act and the Excise Manual, it is seen that Ext.P5 property list has been verified by the learned Magistrate and the date mentioned in Ext.P5 is 29.7.1999, the date of occurrence. Hence, this contention of the learned counsel is not tenable. The next contention put forward by the learned counsel is that the statement of PW.3 was recorded only after two years and this is in violation of Section 50 of the Abkari Act in which it is stated that evidence shall be collected and witnesses shall be questioned without unreasonable delay. In this context, it has to be borne in mind that PWs.2 and 3 were the officials who had accompanied PW.1 at the time of detection of the offence. Hence, delay, if any, caused in recording their statement is not prejudicial to the appellant and not in violation of any provisions of the Abkari Act. Hence, the trial court was fully justified in accepting the evidence adduced by the prosecution for finding the appellant guilty of the offence alleged against him.

8. Learned counsel for the appellant now prays that a lenient view may be taken with regard to the sentence ordered by the trial court. The trial court also considered this question and came to the conclusion that simple imprisonment for a period of two years is not excessive considering the nature of the offence and the fine of Rs.1,00,000/- imposed is the minimum amount prescribed under law. This Court is not inclined to interfere with the sentence awarded by the trial court. In the above circumstances, the conviction and sentence ordered by the court below against the appellant require no interference.

The Crl. Appeal is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A.NO.1145/2006

JUDGMENT

11TH DECEMBER, 2006.